Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-20

JIM FITZGERALD,

Petitioner,

v.

INTERMOUNTAIN FARMERS ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Constitutional Provisions Involved	2
Question Presented	3
Statement of Material Facts	3
Reasons for Granting the Writ	6
Conclusion	12
Appendix A	i
Appendix B	viii
Appendix C	ix

CITATIONS

Constitutions:

U.S.C.A. Const. Amend. 5	3
U.S.C.A. Const. Amend. 14	3
28 U.S.C.A. 1257(3)	2
Utah Constitution, Art. VIII, Sec. 2	2, 4

Cases:

Berger v. U.S., 255 U.S. 22, 65 L.Ed. 481, 41 S.Ct. 230 (1921)	10
Botts v. U.S., 413 F.2d 41 (9th Cir., 1969)	11
Hanger v. U.S., 398 F.2d 91 (8th Cir., 1968), cert. den. 393 U.S. 1119, 22 L.Ed 2d 124, 89 S.Ct. 995 (1969), reh. den. 395 U.S. 971, 23 L.Ed. 2d 761, 89 S.Ct. 2106 (1969)	10
In Re Murchison, 349 U.S. 133, 99 L.Ed. 942, 75 S.Ct. 623 (1955)	6, 8, 9
Johnson v. Mississippi, 403 U.S. 212, 29 L.Ed. 2d 423, 91 S.Ct. 1778 (1971)	6

INDEX—Continued

	Page
Knapp v. Kinsey, 232 F.2d 458 (6th Cir., 1956)	11
Martin v. U.S., 285 F.2d 150 (10th Cir., 1960), cert. den. 365 U.S. 853, 5 L.Ed. 2d 816, 81 S. Ct. 818 (1961), reh. den. 366 U.S. 915, 6 L.Ed. 2d 239, 81 S.Ct. 1088 (1961)	11
Mayberry v. Pennsylvania, 400 U.S. 455, 27 L.Ed. 2d 532, 91 S.Ct. 499 (1971)	8
Offutt v. U.S., 348 U.S. 11, 99 L.Ed. 11, 75 S.Ct. 11 (1954)	8
Palmer v. U.S., 249 F.2d 8 (10th Cir., 1957)	11
Petrey v. Holliday, 178 Ky. 410, 199 S.W. 67 (1917)	12
Rapp v. Van Dusen, 350 F.2d 806 (3rd Cir., (1965)	9
State ex. rel. Turner v. Marshall, 123 Ohio St. 586, 176 N.E. 454 (1931)	8
Texaco, Inc. v. Chandler, 354 F.2d 655 (10th Cir., 1965), cert. den. 383 U.S. 936, 15 L.Ed. 2d 1966, 86 S.Ct. 1066 (1966)	9
Tumey v. Ohio, 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437, 50 A.L.R. 1243 (1926)	6, 8
U.S. v. Bray, 546 F.2d 851 (10th Cir., 1976)	11
U.S. v. Ritter, 540 F.2d 459 (10th Cir., 1976), cert. den. *Olson Farms v. U.S.*, 429 U.S. 951, 50 L.Ed. 2d 319, 97 S.Ct. 370 (1976)	10
U.S. v. Sciuto, 531 F.2d 842 (7th Cir., 1976)	6
Webbe v. McGhie Land Title Company, 549 F.2d 1358 (10th Cir., 1977)	9
Withrow v. Larkin, 421 U.S. 35, 43 L.Ed. 2d 712, 95 S.Ct. 1456 (1975)	6, 7
Statutes:	
Rule 76(e), Utah Rules of Civil Procedure	2, 5

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OCTOBER TERM, 1978

No. .....

JIM FITZGERALD,
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v.

INTERMOUNTAIN FARMERS ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH

Jim Fitzgerald petitions for a Writ of Certiorari to review a refusal of the Supreme Court of Utah to grant the motion of the petitioner, Jim Fitzgerald, defendant and appellant below, to have disqualified, on the grounds of bias and prejudice, a judge who, sitting temporarily as a member of the Utah Supreme Court, participated in the decision on petitioner's appeal and authored the court's opinion.

OPINION BELOW

The majority opinion of the Utah Supreme Court in the case of *Intermountain Farmers Association, plaintiff*, vs. *Jim Fitzgerald, defendant*, (Appendix A, pages xx-xx) is reported at 542 P.2d 1162, Utah, 1978. The

Utah Supreme Court's denial of petitioner's motion to have disqualified a member of the court (Appendix B, pages xx-xx) is unreported. The Utah Supreme Court's denial of petitioner's petition for rehearing (Appendix C, pages xx-xx) is unreported.

JURISDICTION

The decision of the Utah Supreme Court was entered on January 21, 1978. On February 27, 1978, petitioner filed a motion asking that Judge Duffy Palmer be disqualified. (Judge Palmer is a judge of Utah's second judicial district and was asked to sit as a member of the Utah Supreme Court, as provided for by Art. VIII, Sec. 2, of the Utah Constitution, in place of the Supreme Court Justice who disqualified himself because he was the trial judge below. Judge Palmer also authored the opinion of the court.) Plaintiff's motion came on for hearing on February 27, 1978, and the Utah Supreme Court denied the motion. That same day, petitioner filed a petition for rehearing, pursuant to Rule 76(e) of the Utah Rules of Civil Procedure, asking the court to reconsider its opinion in the case. The petition for rehearing was denied on April 7, 1978.

Jurisdiction of the United States Supreme Court is invoked under 28 U.S.C.A. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall . . . be deprived of life, liberty or property without due process of law . . . [U.S.C.A. Const. Amend. 5, p. 4.]

The Fourteenth Amendment to the United States Constitution provides:

> . . . nor shall any state deprive any person of life, liberty, or property without due process of law . . . [U.S.C.A. Const. Amend. 14, Sec. 1, p. 4.]

QUESTION PRESENTED

Has a person been denied due process of law where his case, on appeal, is considered by a judge who is closely related by blood to a person who is in a management position in a corporation which is a party to the case and where such person has a direct and material interest in the outcome of the case?

STATEMENT OF MATERIAL FACTS

Intermountain Farmers, plaintiff in the lower court, sued Jim Fitzgerald, a dairy farmer, to collect money owing for cattle feed sold by Intermountain Farmers to Mr. Fitzgerald. Mr. Fitzgerald counterclaimed for damages, alleging that Intermountain Farmers was negligent in that it sold him defective feed, which caused injury and death to his dairy cattle and reduced milk production. After a nine-day jury trial, judgment was entered in favor of Intermountain Farmers on its complaint and in favor of Mr. Fitzgerald on his counterclaim in the amount of $226,330.57. No appeal was taken from the judgment

in Intermountain Farmers' favor, but Intermountain Farmers appealed the judgment against it.

Utah Supreme Court Justice Gordon Hall (who, prior to his being named to the state's high court, had been the trial judge) properly disqualified himself from participating in the case on appeal. Pursuant to Art. VIII, Sec 2, of the Utah Constitution, Judge Duffy Palmer, a judge of Utah's second judicial district, was asked to sit as a member of the high court.

The Utah Supreme Court, in an opinion authored by Judge Palmer, reversed the decision of the trial court and entered a judgment in favor of Intermountain Farmers.

After the opinion was handed down, Jim Fitzgerald learned that Judge Palmer was the uncle of Steven Lee Palmer, who was at all times material a division manager of Intermountain Farmers. In that management position, Steven Lee Palmer is directly answerable to the president of Intermountain Farmers and has a direct and material interest in the outcome of the appeal. At no time during the proceedings did Judge Palmer disclose to Mr. Fitzgerald or his attorney his family relationship to the management of Intermountain Farmers.

Mr. Fitzgerald had not known of this relationship before the opinion was released and had no reason to investigate any possible relationship. In fact, Mr. Fitzgerald did not even have reason to know that Judge Palmer had been selected to sit with the Supreme Court to consider his case. Since the appeal had been submitted on the briefs, there was no oral argument at which the fifth judge was announced. (Before the opinion was released,

Mr. Fitzgerald's attorney had learned that Judge Palmer was participating in the decision, but he did not know Judge Palmer was authoring the opinion which was submitted to the other members of the court.) Mr. Fitzgerald and his attorney learned of the relationship between Judge Palmer and Intermountain Farmers when a person, previously unknown to Mr. Fitzgerald, contacted him after reading a newspaper account of the case in which it was stated that Judge Palmer authored the opinion. This person informed Mr. Fitzgerald that the judge who considered his case was related to a highly placed manager at Intermountain Farmers. Mr. Fitzgerald and his attorney verified this information and then filed a motion with the Utah Supreme Court asking that Judge Palmer be disqualified and that the court reconsider the case. In his affidavit in support of the motion to disqualify Judge Palmer, Mr. Fitzgerald's counsel pointed out instances where the opinion completely ignored competent evidence that had been introduced at the trial and ignored the findings of the jury, all of which demonstrated that Judge Palmer, in his deliberations, had been dictated by prejudice and bias in favor of Intermountain Farmers. The motion came on for hearing on February 27, 1978, but the court characterized it as a disguised petition for rehearing. The chief justice stated that if Judge Palmer was biased in his decision that bias would be apparent in a petition for rehearing, and if a rehearing was granted, the problem, if one existed, would be solved.

That same day, Mr. Fitzgerald filed his petition for rehearing, pursuant to Rule 76(e) of the Utah Rules of Civil Procedure. The petition and its supporting brief

identified numerous errors of law and incorrect statements in the opinion Judge Palmer wrote.

The court denied Mr. Fitzgerald's petition for rehearing on April 7, 1978.

REASONS FOR GRANTING THE WRIT

I.

It is a basic requisite of due process that a person is entitled to have his case tried by a fair and impartial jury whose decisions are untainted by bias or prejudice. *Withrow v. Larkin,* 421 U.S. 35, 43 L.Ed. 2d 712, 95 S.Ct. 1456 (1975); *Johnson v. Mississippi,* 403 U.S. 212, 29 L.Ed. 2d 423, 91 S.Ct. 1778 (1971); *In Re Murchison,* 349 U.S. 133, 99 L.Ed. 942, 75 S.Ct. 623 (1955); *Tumey v. Ohio,* 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437, 50 A.L.R. 1243 (1926); *U.S. v. Sciuto,* 531 F.2d 842 (7th Cir., 1976). This requisite holds firm whether the case is at the trial level, on intermediate appeal, or at the highest level of appeal.

To ensure due process fairness, both statutes and state constitutions have identified various situations and relationships in which a judge is required to disqualify himself. But the fact that in a particular case the judge does not fit precisely into a proscribed situation or relationship should not mean he is not required to disqualify himself. In light of the due process requirements of a fair, impartial, and unbiased judge, such laws and constitutional provisions should not be construed as enumerating exclusively the cases in which a judge must be disqualified. Rather, such laws are designed to identify sit-

uations and relationships where the probability of bias and prejudice is so great or where a judge's fairness and impartiality are so likely to be questioned that the interests of justice and due process are best served by the judge's being disqualified. *Withrow v. Larkin,* supra.

The law does not permit a judge, who admittedly falls into a proscribed situation or relationship, to refuse to disqualify himself on the grounds that he, nevertheless, is able to remain detached and to decide fairly and without bias. Conversly, the fact that a law identifies specific situations and relationships where a judge may not act should not mean there are no other situations and relationships where due process would require disqualification. If the due process mandate of a fair and impartial judge is to have meaning, a judge must disqualify himself whenever the likelihood of bias or prejudice is great or whenever a judge's fairness and impartiality are likely to be questioned. Due process should require nothing less.

In this case, Judge Duffy Palmer, a lower court judge, was asked to sit with the Utah Supreme Court to consider a case involving a corporation where his nephew, the son of his brother, was in a key management position. The corporate party was appealing a judgment of more than $226,000. The nephew is directly answerable to the president of the corporation and is manager of the Farm Services Division of Intermountain Farmers. The likelihood of Judge Palmer looking at the case with bias and prejudice, whether conscious or subconscious, is too great to permit him to participate. The correctness of the decision is immaterial, as is the actual presence of

bias and prejudice. A litigant cannot be subjected to doubt about a judge's fairness and impartiality. He is entitled not only to a fair and impartial trial but also to the belief that he is getting a fair and impartial trial. *State ex. rel. Turner v. Marshall*, 123 Ohio St. 586, 176 N.E. 454 (1931). Where a judge's nephew is in a key management position with a corporation which is appealing a large judgment against it, there is a very strong reason to question the judge's ability to be impartial and unbiased. In such a situation, due process should require nothing less than disqualification.

"[O]ur system of law has always endeavored to prevent even the probability of unfairness . . . Circumstances and relationships must be considered . . . Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *In Re Murchison*, supra. The constitutional requirements are "not satisfied by the arguments that men of the highest honor" would not abandon their duties to weigh a case fairly and impartially. *Tumey v. Ohio*, supra. Due process rights cannot be compromised.

II.

Due process entitles a person not only to a fair and impartial trial conducted by an unbiased judge without prejudice but also to the appearance of a fair and impartial judge. "[J]ustice must satisfy the appearance of justice." *Mayberry v. Pennsylvania*, 400 U.S. 455, 27 L.Ed. 2d 532, 91 S.Ct. 499 (1971); *Offutt v. U.S.*, 348

U.S. 11, 99 L.Ed. 11, 75 S.Ct. 11 (1954); *In Re Murchison*, supra.

That Mr. Fitzgerald was deprived of the appearance of a fair and impartial judge is evidenced by the manner in which he discovered Judge Palmer's familial relationship to a member of Intermountain Farmers' management. A person, who did not even know Mr. Fitzgerald, read a newspaper account of the case which stated that Judge Palmer had authored the court's opinion and then contacted Mr. Fitzgerald to inform him that the case had been decided by Judge Palmer in a way that greatly benefitted his nephew. It can hardly be said that Judge Palmer gave the appearance of being an unbiased judge when a member of the general public who did not even know Mr. Fitzgerald thought that Mr. Fitzgerald's case had not been decided by an impartial judge. The appearance of a fair and impartial judgment had been destroyed, in violation of Mr. Fitzgerald's due process rights.

"For the proper administration of justice requires of a judge not only actual impartiality but also the appearance of a detached impartiality." *Texaco, Inc. v. Chandler*, 354 F.2d 655 (10th Cir., 1965), cert den. 383 U.S. 936, 15 L.Ed. 2d 1966, 86 S.Ct. 1066 (1966); *Rapp v. Van Dusen*, 350 F.2d 806 (3rd Cir., 1965). "[A]ppearance of impartiality is virtually as important as the fact of impartiality." *Webbe v. McGhie Land Title Company*, 549 F.2d 1358 (10th Cir., 1977).

The law recognizes that disqualification is appropriate not only where there is actual or apparent bias and prejudice but also when the circumstances are such that

the judge's impartiality might be reasonably questioned. See a discussion of this point in *U.S. v. Ritter*, 540 F.2d 459 (10th Cir., 1976), cert. den. *Olson Farms v. U.S.*, 429 U.S. 951, 50 L.Ed. 2d 319, 97 S.Ct. 370 (1976).

III.

Mr. Fitzgerald's counsel made a motion for Judge Palmer's disqualification at the earliest opportunity. Neither Mr. Fitzgerald nor his counsel initially knew that Judge Palmer had been selected to consider this appeal or that he would author the opinion nor did they know of Judge Palmer's familial relationship to a member of Intermountain Farmers' management until after the Supreme Court's decision had been handed down. As soon as Mr. Fitzgerald and his counsel learned of the familial relationship and were able to verify it, a motion to disqualify Judge Palmer was filed.

The Utah Supreme Court, however, refused to grant the motion, choosing to characterize it as a disguised petition for rehearing. The chief justice pointed out that, if Judge Palmer were biased and prejudiced in favor of Intermountain Farmers, instances of his bias and prejudice would be apparent in a petition for rehearing and, if indeed bias and prejudice were evident, a new hearing would be granted and the case would be reconsidered.

A judge cannot be disqualified on the grounds of bias and prejudice when a charge of bias is based on nothing more than rulings in the case. *Burger v. U.S.*, 255 U.S. 22, 65 L.Ed. 481, 41 S.Ct. 230 (1921); *Hanger v. U.S.*, 398 F.2d 91 (8th Cir., 1968) cert. den. 393 U.S.

1119, 22 L.Ed. 124, 89 S.Ct. 995 (1969), reh. den. 395 U.S. 971, 23 L.Ed. 2d 761, 89 S.Ct. 2106 (1969). Nor can one scruitinize the decision of an appellate judge searching for errors of law as evidence of bias and prejudice. Adverse rulings are not grounds for disqualification. *U.S. v. Bray*, 546 F.2d 851 (10th Cir., 1976); *Botts v. U.S.*, 413 F.2d 41 (9th Cir., 1969); *Martin v. U.S.*, 285 F.2d 150 (10th Cir., 1960), cert. den. 365 U.S. 853, 5 L.Ed. 2d 816, 81 S.Ct. 818 (1961), reh. den. 366 U.S. 915, 6 L.Ed. 2d 239, 81 S.Ct. 1088 (1961); *Palmer v. U.S.*, 249 F.2d 8 (10th Cir., 1957). One cannot look at erroneous rulings and say a judge is biased and prejudiced because he made those rulings. Rather, in furnishing a basis for disqualification, the situation must be such that the bias and prejudice and the facts from which it stems must have existed before the case came before the judge. *Knapp v. Kinsey*, 232 F.2d 458 (6th Cir., 1956). If, for some reason, a judge should have been disqualified but was not and the move to disqualify him comes only after the trial or after a decision has been rendered, erroneous rulings of law can be viewed only as results of the preexisting bias and prejudice; but in and of themselves, they cannot be the sole evidence of bias and prejudice. If the latter were permissable, a judge who was biased and prejudiced would be allowed to hear and consider a case, and if he made no erroneous rulings of law, his decision would stand; but if he made errors of law, he would be disqualified. Clearly, this is not proper procedure. A judge who has heard a case at trial or considered a case on appeal but who should have been disqualified will be disqualified

even if his decision was correct and proper. *Petrey v. Holliday*, 178 Ky. 410, 199 S.W. 67 (1917).

In the affidavit supporting the motion to disqualify Judge Palmer, counsel pointed out the familial relationship between Judge Palmer and the division manager of Intermountain Farmers and also pointed out conclusions stated by Judge Palmer in the court's opinion which evidenced bias. For example, in the opinion, Judge Palmer stated there was no direct evidence of certain facts determined at trial and, in his affidavit, Mr. Fitzgerald's counsel enumerated instances of direct evidence on those very points. These instances were, in actuality, immaterial on the question of whether Judge Palmer should have been disqualified as the familial relationship involved was the reason for disqualification; but they were nevertheless included in the affidavit as examples of what resulted from Judge Palmer's bias.

The Utah Supreme Court, however, chose not to consider this familial relationship question but, in effect, told Mr. Fitzgerald that, if Judge Palmer was prejudiced, that prejudice would be apparent in a petition for rehearing in which errors in the decision could be set forward. Such a method of determining whether a judge should be disqualified is improper and, as such, is a violation of due process.

CONCLUSION

I.

Due process requires a judge to be fair, impartial, unbiased, and unprejudiced. The fact that a judge is

closely related by blood to the management of a corporate party in a case raises sufficient question as to his ability to be unbiased, and his disqualification is required.

II.

Due process requires that the appearance of justice be maintained. Where reasonable question arises as to a judge's impartiality, he should be disqualified in the interest of the appearance of justice.

III.

Adverse rulings cannot be used to determine that a judge was biased and prejudiced nor can proper rulings or correct decisions be used to conclude that he was not.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF UTAH

Intermountain Farmers Association, a Utah corporation,
Plaintiff and Appellant,

v.

Jim Fitzgerald,
Defendant and Respondent.

Jan. 25 Rcc'd
No. 14723
FILED
January 24, 1978

Geoffrey J. Butler,
Clerk

PALMER, District Judge:

1. This case was brought by the plaintiff to recover the amount due on open account for the sale of feed to the defendant in the sum of $41,625.00 with interest and reasonable attorney's fees. This is an appeal from a money judgment in favor of the defendant and respondent, (defendant herein) on his counterclaim.

2. The defendant originally answered the plaintiff's complaint with a general denial. Some months later the defendant was permitted by the trial court to file an amended answer and counterclaim for alleged injuries and death to defendant's dairy herd allegedly caused by toxic levels of urea, and alleged inconsistencies and deficiences of protein in the feed sold by the plaintiff to the defendant.

3. There are five allegations made on the appeal as follows:

One, the plaintiff alleges that the court did not grant attorney's fees as provided in the contractual arrangement between the plaintiff and the defendant. The defendant has agreed that attorney's fees should have been allowed, thus there is no dispute on appeal on this item.

Two, the plaintiff alleges the instructions to the jury relating solely to the issue of punitive damages was prejudicial error.

Three, the instruction to the jury to the effect of a violation of a statute as it affects negligence was prejudicial error.

Four, plaintiff's Motion for a Directed Verdict should be granted and was error on the part of the court not to have granted as requested by the plaintiff.

Five, prejudicial error was committed in the admission of evidence.

It is not necessary for this Court to treat the first point of appeal by the plaintiff since the defendant has agreed that an award of a reasonable attorney's fee should have been made.

The next point of contention is that evidence received was on its face objectionable, but was allowed by the trial court for the purposes of relating, "solely to the issue of alleged punitive damage." It is the opinion of the Court that by allowing such evidence in without clarification was prejudicial error and the case should be reversed on this matter alone.

The Court's instruction number twenty (20) gave the following instruction:

> You are instructed that *certain exhibits hereinafter enumerated* have been *offered and admitted into evidence* by the court as *bearing upon the question of notice* to the plaintiff of a deficiency in its feed. You are instructed that *said exhibits should not be considered for any other purpose or as bearing upon any other issue and do not constitute proof of any other claim* made by the counterclaimant in this case. [Emphasis added.]

However, after giving the instruction, the trial court failed to advise the jury as to the numbers of the exhibits that were so restricted. Thus, the jury reviewed all the exhibits without restriction, when in fact some of the exhibits should have been restricted to the issue of punitive damages. The admonition of the court as provided in instruction number twenty was not sufficient to overcome the prejudicial error created by allowing such evidence in.

The transcript and the abstract were filled with objections of the plaintiff in an attempt to keep such exhibits out because they were so remote in time and place as not to be pertinent to this plaintiff. In reading the abstract and the transcript, this Court can find no direct evidence of the plaintiff's feed being harmful; no tests by state chemists of any toxicity or existence of urea in the feed bought by the defendant from the plaintiff's Spanish Fork Branch. The only contaminated food came from different branches and this feed was not sold to the defendant. As a matter of fact, during the time plaintiff's feed was fed to the defendant's cattle, the defendant's cattle's milk production increased from 372 pounds less

than the Salt Lake County yearly average production per cow to 1,657 over the yearly average of the Salt Lake County production per cow.

The next matter appealed from was the instruction to the jury on the issue of negligence constituting prejudicial error. The court instructed that "the feed in question was *manufactured* in violation of the statute, there was negligence per se *as a matter of law.*"

This Court has long held that the violation of a statute does not necessarily constitute negligence per se and may be considered only as evidence of negligence, and thus the instruction of the court is prejudicial error and should be reversed on that ground. See *Thompson v. Ford Motor Co.*, 16 Utah 2d 30, 395 P.2d 62 (1964). Justice Crockett, in the Thompson case, noted that violation of a safety standard set by statute or ordinance may be regarded as "prima facie evidence of negligence, but is subject to justification or excuse if the evidence is such that it reasonably could be found." See also *White v. Shipley*, 48 Utah 496, 160 Pac. 441 (1916); *Klafta v. Smith*, 17 Utah 2d 65, 404 P.2d 659.

The Thompson case is the leading case in the State of Utah. See the citation set forth in more detail in the Thompson case.

The next pointed cited as error of the trial court was that evidence offered and received was insufficient as a matter of law to prove that the plaintiff's negligence proximately caused the defendant-counterclaimant's damage.

A careful reading of the transcript and the abstract

substantiates the plaintiff's contentions. Any food shown to be contaminated in the evidence was from plants other than the Spanish Fork Plant where the defendant purchased its feed from the plaintiff. There was no showing of any causal connection between the alleged harmful feed and the death, sickness or loss of production of the defendant's dairy cattle. As a matter of fact, it was more reasonable to presume that any death, sickness or loss of production was caused from the feeding of the defendant's own feed since no contaminated feed was shown to have been purchased from plaintiff's plant by the defendant. The counterclaim should have been dismissed on plaintiff's motion after the presentation of all the evidence by the defendant on its counterclaim.

This Court has recognized that a directed verdict is proper where the proof fails to disclose any controversies as to controlling factor where there is lack of proof of one or more material elements in a cause of action asserted. See *Flynn v. W. P. Harlin Construction Co.*, 29 Utah 2d 317, 509 P.2d 356 (1973).

In this case, there was no direct evidence produced by the defendants to show that the plaintiff's dairy feed consumed by the defendant's cows, contained an excess of urea, deficiency of protein, or any inconsistencies in the amount of protein that would have caused the alleged damage.

In addition thereto, there is no evidence in the record to justify a conclusion that the feed caused the death, diminished milk supply, or any other damage to the de-

fendant's cattle. Circumstantial evidence presented was totally lacking.

The appellant's last claim of error is that prejudice was committed in the admission of evidence. The record is clear that the court allowed defendant to read in material contained in exhibits that had been previously denied admission. Rule 70 of the Utah Rules of Evidence prohibits proof of contents of a writing, other than by the writing itself, with few exceptions. None of said exceptions are noted here.

The record reveals that general revenue records, magazine articles, and other such evidence were not allowed in, but were used as the basis of testimony but were never marked as exhibits or introduced in evidence.

In the *Watson Land Co. v. Rio Grande Oil Co.*, 61 C.A. 2d 269, 142 P.2d 950, the court therein stated:

> The testimony of defendant's president, that the oil his company was producing had a gravity of less than 14, and no probative value, in view of facts that, as revealed by his subsequent answers, he did not speak of his own knowledge, but based his statement on the "run tickets" of the refineries which bought the products of his wells, and there was no showing of the basis on which the run tickets were computed.

The conduct of the defendant, reading the exhibits that had been excluded or refused, circumvented the very rule of law provided in Rule 70 of the Utah Rules of Evidence. For though the exhibits were refused, the unsubstantiated information contained in those exhibits were

nevertheless presented directly to the jury for its full consideration by the defendant's verbatim reading of the exhibits.

For these reasons set forth above, this Court affirms the judgment for the plaintiff granted below in the sum of $41,625.00 plus interest and attorney's fees. The interest and attorney's fees to be determined below.

For the reasons stated above, this Court reverses and dismisses the case for every other purpose except the setting of attorney's fees and determining the amount of interest.

WE CONCUR:

A. H. Ellett, Chief Justice

J. Allan Crockett, Justice

Maughan and Wilkins, Justices, concur in result.

Hall, Justice, having disqualified himself, does not participate herein.

APPENDIX B

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

February 27, 1978

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Intermountain Farmers Association,
a Utah corporation,
Plaintiff and Appellant,

v. No. 14723

Jim Fitzgerald,
Defendant and Respondent.

This day respondent's motion for an order disqu[illegible]
J. Duffy Palmer, District Judge, and granting r[illegible]
denied.

Geoffrey J. Butler, Clerk

APPENDIX C

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

April 7, 1978

Office of the Clerk

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Intermountain Farmers Association,
a Utah corporation,
Plaintiff and Appellant,

v. No. 14723

Jim Fitzgerald,
Defendant and Respondent.

This day petition for rehearing denied.

Geoffrey J. Butler, Clerk

cc: Tom R. Blonquist, Esquire